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10/815,433	04/01/2004	James McClenahan	0223-001	7659
7590	09/08/2005			
Robert G. Lev 4766 Michigan Boulevard Youngstown, OH 44505				
EXAMINER EARLY, MICHAEL JACOBY				
ART UNIT 3749				
PAPER NUMBER				

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/815,433

Applicant(s)

MCCLLENAHAN, JAMES

Examiner

Michael J. Early

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/22/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

#### **Priority**

The examiner has reviewed all the content submitted with this application and has determined that it has neither domestic nor foreign priority.

#### **Information Disclosure Statement**

The Information Disclosure Statement for this application meets all of the requirements set forth and has been approved by the examiner.

#### **Oath/Declaration**

The Oath/Declaration for this application meets all of the requirements set forth and has been approved by the examiner.

#### **Drawings**

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the appropriate proportionality between the outdoor cooker's respective components as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

The applicant makes reference several times in the specification to the approximate distance between respective components:

- "However, this is covered by convection plate 3 which is approximately one inch above the top of the fire box." (page 8, lines 15 – 16)
- "Fire box 2 is located approximately sixteen inches from the bottom of the grill 1." (page 8, line 19 – page 9, line 1)
- "...the grill is filled with water up to approximately three to five inches above the bottom of fire box 2..." (page 9, lines 15 – 16)

Upon referring the to the enclosed drawings, the distance between the respective components doesn't seem to correspond with the dimensions discussed in the specification. The examiner is not suggesting that the applicant include dimensions in the drawing, however; what is suggested, is that the applicant provide drawings that are more clearly draw to scale and provide the proportionate perspective as discussed in the specification.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because:

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- Reference character "71", shown in Figure 2, has been used to designate both a "damper" (see page 10, line 14) and "baffle plate" (see page 12, line 3).
- Reference character "6", shown in Figure 2, has been used to designate both an "ash disposal vent" (see page 8, lines 6 – 7) and "hood" (see page 9, line 8).
- Reference character "6", shown in Figure 3, has been used to designate both a "hood" and "elbow drain".

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification**

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.

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- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

It is suggested that the applicant review this application and follow the guidelines set forth above (i.e. section headings should: be in upper case and not in bold or underline type).

The disclosure is objected to because of the following informalities:

- Throughout the specification, the applicant makes reference to an outdoor cooker's "combustion box" (see page 5, line 11) and numerous times to its "fire box" (see page 6, line 12; page 8, line 11). It is suggested, for clarification purposes, that the applicant explicitly designate if these two items are to be used interchangeably.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Holland (US 4,773,319).

Holland discloses a barbecue grill and cooker for outdoor use (see col. 1, lines 5 – 6) having a body (12 – housing) with a removable hood (hood 42 is pivotably attached to housing 12) at the top of the body (as seen in Figure 1), the body containing a fire box (20) adjacent a bottom portion of said body (18 – bottom surface) of the body (as seen in Figures 1 – 4), the body having a chimney (46) extending through the top of the body (as seen in Figures 2 – 4) and a cooking surface (40 – food supporting grid) located under the hood, the cooker comprising a means for covering the fire box to prevent contact with food drippings from the cooking surface and for diverting combustion gases and solids from the cooking surface. The examiner considers the “means” to be the heat deflector (24), which “serves to prevent direct contact of the gas flame from burner unit (20) with grease collector (28)...for imparting a barbecue flavor to food being cooked (see col. 4, lines 6 – 12).

Holland further discloses of a means for covering and diverting to comprise of a convection plate (28 – grease collector), which extends over a majority of a horizontal area in the body over the fire box (see col. 3, lines 28 – 40).

Holland further discloses of a flue (46), which serves as a means for diverting combustion gases and solids from the cooking surface (see col. 3, lines 52 – 54; col. 4, lines 12 – 14).

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3 – 8 and 11 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holland in view of Lassig, Jr. (US 6,050,177).

As previously stated, Holland discloses a grill and cooker with possible exception to a cooker comprising:

- a convection plate further comprises an opening for a chimney flue,
- a convection plate that is approximately one to three inches above the fire box
- a first chimney which extends beneath the convection plate,
- the bottom of the extended chimney flue is approximately one to three inches above the fire box,
- a convection plate arranged over the fire box,
- a convection plate is between one to three inches above the fire box and contains an aperture for the extended chimney flue

and has the means for:

- generating steam comprise a body arranged in a bottom portion of the cooker and extending around a portion of the fire box,



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- draining the water from the cooker,
- diverting comprise an extended chimney flue in close proximity to the fire box,
- generating steam comprise a body of water rising to between two and seven inches below the extended chimney flue.

Attention is directed to the secondary reference, Lassig, Jr., (as seen in Figure 3) which comprises of a cooker with a gridiron (10), stainless steel grease catchpan (10a) and extendable flu (4). Through visual inspection, it can be seen that both the gridiron and catchpan contain openings for the flu, which are in close proximity to the firebox, to extend beneath them.

Holland also discloses that the barbecue grill and cooker can easily be converted to a steamer or smoker by closing a valve (38) and filling the grease collector (28) with water (see col. 4, lines 30 – 35). As stated earlier, Holland discusses of a heat deflector (24) and grease collector (28), which are arranged above the respective cooker's gas burner unit (20) (as seen in Figures 2 and 3) and serve the dual purpose of preventing food drippings from contacting the cooking surface as well as diverting combustion gases and solids from the cooking surface.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing grill of Holland by creating an aperture in the grease collector (28) and heat deflector (24), as taught by Lassig, Jr., for the purpose of allowing the first chimney, which is located in close proximity to the fire box, to extend beneath both the grease collector and heat deflector.

In regard to claims 4, 12, 14 and 16 they are unpatentable over Holland in view of Lassig, Jr. as a result of design considerations.

Neither Holland nor Lassig, Jr. discusses the exact dimensions between the respective components of their inventions. In the present application, as previously stated, the applicant points out the dimensions between various components of the prospective invention in several claims; however, has not disclosed that having the various components at the specified dimensions apart from each other solves any

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stated problem or is for any particular purpose. Moreover, it appears that the cooker would perform equally well with the various components being at close proximity however not at specified dimensions disclosed.

Therefore, it would have been obvious to:

- provide the convection plate approximately one to three inches above the fire box to provide a protective covering for the fire box, which in turn, will prevent the flame from contacting the grease collector.
- provide the bottom of the extended chimney flue approximately one to three inches above the fire box to provide combustion gases a route to exhaust out of the grill.
- provide the convection plate between one and three inches above the fire box, and contains an aperture for the extended chimney flue to provide a protective covering for the fire box, which in turn, will prevent the flame from contacting the grease collector, and a route for the combustion gases to exhaust out of the grill.
- generate steam using a body of water rising to between two and seven inches below the extended chimney flue to ensure that the chimney would not be clogged with water.

Accordingly, the use of the dimensions disclosed above are deemed to be design considerations, which fail to patentably distinguish over the prior art of Holland and Lassig, Jr..

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holland in view of Lassig, Jr. and further in view of Wilbricht (US 3,757,675).

As previously stated, Holland discloses a grill and cooker with possible exception to a cooker comprising of a firebox that has an open top, sealed sides and a bottom to stop migration of moisture.

Attention is directed to the secondary reference, Wilbricht, which teaches of a barbecue grill that consists of a fire box that is constructed out of welded sheet metal

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and contains sides (17), ends (18) and a bottom (19) (see col. 2, lines 9 –13; Figures 1, 2, 4 and 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing grill of Holland by constructing its fire box, as taught by Wilbricht, to be made out of a welded sheet metal so that it would have an open top, sealed sides and a bottom for the purpose of stopping the migration of moisture.

Claims 17 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holland in view of Lassig, Jr., Vick (US 5,031,602) and Kitten (US 5,481,964).

As previously stated, Holland discloses a grill and cooker with possible exception to a cooker comprising of a means for:

- controlling the cooking temperature of the area around the cooking surface through exhaust,
- generating steam through the use of a body of water that is located at the bottom portion of the cooker,
- controlling the steam content in the cooker using the exhaust that exits out of a secondary chimney, which extends through the top of the cooker's hood,
- balancing the heat, smoke and steam within the cooker through the use of a first chimney damper, second chimney damper, extended flue for at least one chimney and a convention plate

Attention is directed to the secondary reference, Lassig Jr., which as stated earlier teaches of creating an aperture for the flu to extend through and beneath the grill's gridiron and catchpan. In addition, it also teaches of an analog bimetal thermometer (24) that is used to monitor the temperature within the cooker (see col. 2, lines 35 – 40; Figure 1).

Attention is directed to the secondary reference, Vick, which teaches of using metal plates (78) and a damper control (38) for the purpose of controlling the

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displacement of heat and smoke into the cooking apparatus' cooking chamber (16) (see col. 5, lines 42 – 52 and 58 – 65). Vick also teaches of placing a second flue (40) on top of its cooking apparatus (see col. 3, lines 25 – 26; Figures 1 and 2).

As stated earlier, Holland discloses a barbecue grill that can easily be converted to a steamer or smoker by closing a valve (38) and filling the grease collector (28) with water (see col. 4, lines 30 – 35).

Attention is directed to the secondary reference, Kitten, which teaches of a barbecue pit that consists of a baffle plate that is mounted under its hood and beneath its chimney and used to control the amount of heat and smoke that flows into its oven (see col. 3, lines 33 – 41).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing grill of Holland to:

- install an analog bimetal thermometer, as taught by Lassig Jr., to aid in monitoring the cooking temperature within the cooker;
- install a second flue, along side a primary flue, that uses a controlling mechanism (i.e. baffle plate, metals plates, dampers) in the grill of Holland, as taught by Vick and Kitten, for the purpose of balancing the heat and smoke as well as the steam, which is generated by the grill when it is converted to a steamer, that enters into the cooker.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJE  
8/29/05

Michael J. Early  
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**MONICA S. CARTER**  
**PRIMARY EXAMINER**